IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 4633 of 2007(B)

OS.731/2003 of MUNSIFF COURT, PARAVUR

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PETITIONER:

THOMAS LEOPOLD,
KANAPPILLY VEEDU, VALLUVALLY KARA,
KOTTUVALLY VILLAGE.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:

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1. GRACY LEOPOLD,
WIDOW OF GEORGE LEO POLD, KANAPPILLY,
VALLUVALLY KARA, KOTTUVALLY VILLAGE.

2. GEORGE, S/O. LEOPOLD, -DO- -DO-.

3. JOSE, S/O. LEOPOLD, -DO- -DO-.

4. MANUEL, S/O. LEOPOLD, -DO- - DO-.

5. MARTIN, S/O. LEOPOLD, -DO- -DO-.

6. IRISH DENNY, S/O. LEOPOLD -DO- -DO-.

7. BEENA, D/O. LEOPOLD, -DO- -DO-.

8. SWEETTI, D/O. LEOPOLD, -DO- -DO-.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).4633 OF 2007

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: COPY OF PLAINT IN OS.731/2003, MUNSIFF COURT, NORTH PARAVUR.

EXHIBIT P2: COPY OF PETITION DATED 7.8.2006 FILED BY DEFENDANTS 4 AND 5 IN IA.1438/06 IN OS.731/2003, MUNSIFF COURT, NORTH PARAVUR.

EXHIBIT P3: COPY OF WRITTEN STATEMENT FILED BY DEFENDANTS 4 ANDS 5 DATED 7.8.2006 IN OS.731/2003, MUNSIFF COURT, NORTH PARAVUR.

EXHIBIT P4: COPY OF REPLICATION DATED 5.10.2006 FILED BY THE PLAINTIFF IN OS.731/2003, MUNSIFF COURT, NORTH PARAVUR.

EXHIBIT P5: COPY OF IA.1389/2006 IN OS.731/2003, MUNSIFF COURT, NORTH PARAVUR.

EXHIBIT P6: COPY OF ADDITIONAL WRITTEN STATEMENT FILED BY THE DEFENDATNS IN OS.731/2003, MUNSIFF COURT, NORTH PARAVUR.

EXHIBIT P7: COPY OF IA.1850/2006 IN O.S.NO.731/2003, MUNSIFF COURT, NORTH PARAVUR.

EXHIBIT P8: COPY OF COUNTER AFFIDAVIT DATED 18.10.2006 IN I.A.1850/2006 IN OS.731/2003, MUNSIFF COURT, NORTH PARAVUR.

EXHIBIT P9: COPY OF ORDER DATED 3.11.2006 IN IA.1850/2006 O.S.NO.731/2003, MUNISFF COURT, NORTH PARAVUR.

/TRUE COPY/

PA TO JUDGE

M.N.KRISHNAN, J.

W.P(C).NO.4633 of 2007

Dated this the 20th day of July, 2007

JUDGMENT

This Writ Petition is filed seeking to set aside the order passed by the learned Munsiff, North Paravur in I.A.No.1850 of 2006 in O.S.No.731 of 2003. It was an application filed by the plaintiff for sending the signature in the disputed will for comparison by an expert. The suit is filed for partition by the plaintiff and the defendants had resisted the suit on the ground that the father had executed a will and thereby, they are entitled to the property. Therefore, the result of the suit depends upon the genuineness and validity of the will. Now, it is submitted by learned counsel for the petitioner-plaintiff that the father was mentally incapacitated and he had not executed any will or in other words, the plaintiff disputes the execution of the will executed by the father. So, in order to prove the will, necessarily, the signature of the father has to be proved. Instead of resorting to the hazardous method of comparison of signature by the court, it is always desirable to have the opinion of the expert which may help the court to decide the question. I am equally aware that the disputed document can be proved by

examining the attesting witnesses as well. But, in order to have a complete and clear picture, it is desirable that the document is sent for an expert opinion to find out the signature which is in dispute. Therefore, the order under challenge is set aside and the learned Munsiff is directed to send the original of the will for comparison of the disputed signature with the admitted signature of the person who had executed the will which is anterior in point of time, so that the expert will be able to give his correct version on the same. The expenses are to be met by the plaintiff for the same and it shall be sent to the expert, from whom the report can be obtained within reasonable time and not referring to a government expert if it will take a very long time to get a report.

The Writ Petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

vgs.